

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

298

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22,514

SIMON BOORDA,

Petitioner,

v.

SUBVERSIVE ACTIVITIES CONTROL BOARD,

Respondent

No. 22,522

ROBERT ARCHULETA and WAYNE DALLAS HOLLEY,

Petitioners,

v.

SUBVERSIVE ACTIVITIES CONTROL BOARD,

Respondent

On Review of Orders of the Subversive Activities Control Board

APPENDIX

United States Court of Appeals
for the District of Columbia Circuit

FILED JAN 10 1969

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Docket Entries - Boorda Case

SUBVERSIVE ACTIVITIES CONTROL BOARD

Docket No. I-50-69

CLARK v. SIMON BOORDA

Document Register

Document
Number
Symbol-N

N-1

PETITION for a determination that Simon Boorda is a member of the Communist Party, United States of America, as provided by the provisions of Section 13(a) of the Subversive Activities Control Act of 1950, as amended, together with verification, signed Ramsey Clark, dated July 1, 1968.

(Received July 1, 1968, 5:30 p. m.)

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* * * *

N-2

ANSWER signed Simon Boorda, together with Proof of Service, signed Joseph Forer, Attorney for Respondent, verified July 22, 1968.

(Received July 22, 1968, 1:15 p. m.)

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TRANSCRIPT OF HEARING held September 11, 1968, Washington,
D. C. No. 2

(Received September 12, 1968, 8:45 a. m.)

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TRANSCRIPT OF HEARING held September 12, 1968, Washington,

D. C. No. 3

(Received September 13, 1968, 8:45 a. m.)

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N-24

REPORT AND ORDER, by the Board, issued November 15, 1968.

* * * *

Docket Entries - Archuleta Case

SUBVERSIVE ACTIVITIES CONTROL BOARD

Docket No. I-45-69

CLARK v. ROBERT ARCHULETA

Document Register

Document
Number
Symbol-N

N-1

PETITION for a determination that Robert Archuleta is a member of the Communist Party, United States of America, as provided by the provisions of Section 13(a) of the Subversive Activities Control Act of 1950, as amended, together with verification, signed Ramsey Clark, dated July 1, 1968.

(Received July 1, 1968, 5:30 p. m.)

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* * * *

N-3

ANSWER signed Robert Archuleta, Respondent, together with

Proof of Service, signed Joseph Forer, Attorney for
Respondent, verified July 22, 1968.

(Received July 22, 1968, 1:15 p. m.)

* * * *

N-18 ORDER SETTING CONSOLIDATED HEARINGS, by the Board, signed
John W. Mahan, Chairman, dated September 18, 1968,
commencing hearings at 11:00 a. m. on Tuesday, October
1, 1968, in Board hearing room.

* * * *

- - - - - TRANSCRIPT OF HEARINGS held October 1, 1968, Washington, D. C.
No. 2

(Received October 2, 1968, 9:45 a. m.)

- - - - - TRANSCRIPT OF HEARINGS held Oct. 2, 1968, Washington, D. C.
No. 3

(Received Oct. 3, 1968, 9:45 a. m.)

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N-23 REPORT AND ORDER OF THE BOARD, issued November 21, 1968.

* * * *

Docket Entries - Holley Case

SUBVERSIVE ACTIVITIES CONTROL BOARD

Docket No. I-46-69

CLARK v. WAYNE DALLAS HOLLEY

Document Register

Document
Number
Symbol-N

N-1

PETITION for a determination that Wayne Dallas Holley is a member of the Communist Party, United States of America, as provided by the provisions of the Subversive Activities Control Act of 1950, as amended, together with verification, signed Ramsey Clark, dated July 1, 1968.

(Received July 1, 1968, 5:30 p. m.)

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* * * *

N-3

ANSWER signed Wayne Dallas Holley, together with Proof of Service, signed Joseph Forer, Attorney for Respondent, verified July 22, 1968.

(Received July 22, 1968, 1:15 p.m.)

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N-18

ORDER SETTING CONSOLIDATED HEARINGS, by the Board, signed John W. Mahan, Chairman, dated September 18, 1968, commencing hearings at 11:00 a. m. on Tuesday, October 1, 1968, in Board hearing room.

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* * * *

TRANSCRIPT OF HEARINGS held October 1, 1968, Washington,

D. C. No. 2

(Received October 2, 1968, 9:45 a. m.)

TRANSCRIPT OF HEARINGS held Oct. 2, 1968, Washington, D. C.

No. 3

(Received Oct. 3, 1968, 9:45 a. m.)

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N-23

REPORT AND ORDER OF THE BOARD, issued November 21, 1968.

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SUBVERSIVE ACTIVITIES CONTROL BOARD

Docket No. I-50-69

RAMSEY CLARK, ATTORNEY GENERAL
OF THE UNITED STATES,

PETITIONER,

v.

SIMON BOORDA,

RESPONDENT

Oran H. Waterman, Robert A. Crandall, and
Garvin L. Oliver, for petitioner.

John J. Abt and Joseph Forer for respondent.

REPORT AND ORDER

Issued November 15, 1968

SUBVERSIVE ACTIVITIES CONTROL BOARD

Docket No. I-50-69

RAMSEY CLARK, ATTORNEY GENERAL OF THE UNITED STATES,

PETITIONER,

v.

SIMON BOORDA,

RESPONDENT.

REPORT OF THE BOARD

Preliminary Statement

This is a proceeding on petition of the Attorney General, filed July 1, 1968, for an order of the Board determining the respondent, Simon Boorda, to be a member of the Communist Party, United States of America, a Communist-action organization, as provided by the provisions of section 13 (a) of the Subversive Activities Control Act of 1950, as amended.¹

The petition alleged that there is in effect a final order of the Board determining the Communist Party of the United States of America to be a Communist-action organization and that at the time of the filing of the petition and at all times mentioned therein the respondent, Simon Boorda, had been a member of said Communist Party.² In support of his petition the Attorney General set forth in paragraphs numbered I through V allegations that during March 1967 respondent was identified as Chairman of the Communist Party in Indiana, and that he currently holds that position; that during June 1967 respondent was appointed temporary State Organizer for the Party in Indiana and that he currently holds that position; that during November 1967, respondent acted as the Party leader in Indiana by calling meetings, collecting

¹ Six similar petitions were filed in the Board by the Attorney General at the same time as this petition was filed. The six cases were assigned docket numbers I-45-69, I-46-69, I-47-69, I-48-69, I-49-69, and I-51-69.

² For convenience the Communist Party of the United States of America will sometimes be referred to herein as "the Communist Party" or "the Party."

dues, and by recruiting new members into the Party; that during 1966, 1967, and 1968 respondent on divers occasions attended meetings of the Party, the attendance at which was restricted to Party members; and that during 1967 and 1968 respondent on divers occasions advised and imparted information to Party members regarding Party teaching, business, and policy.

On July 22, 1968, respondent filed an answer to the petition, attacking the constitutionality of section 13(a) and section 13(g) of the Act; denying the allegation that the Communist Party of the United States of America is a Communist-action organization; and relying upon the First Amendment and upon the privilege against self-incrimination in refusing to answer the allegation that respondent was and continues to be a member of the Communist Party and the allegations of paragraphs I to V, inclusive, of the petition. Under rule 201.7(a) of the Board's Rules of Procedure, as revised, the reliance upon the constitutional privilege against self-incrimination in respondent's answer operates as a denial for the purpose of this proceeding.

In this case and in the six similar cases referred to in footnote 1, identical preliminary motions were filed by the respondents involving disclosure of possible electronic surveillance. We discuss this matter under the heading "Legal Questions," infra. We also consider infra, an identical issue in each of the cases predicated upon the respondents' assertion that the world Communist movement, as described in section 2 of the Act, no longer exists.

The evidentiary hearing was held on September 11 and 12, 1968, at Washington, D. C., before the full Board. Counsel for petitioner presented the oral testimony of two witnesses. Respondent presented no witnesses or other evidence. One exhibit was received in evidence which was marked Government Exhibit A. (Tr. 80-81.) On September 26, 1968, petitioner filed and served proposed findings of fact consisting of seventeen numbered paragraphs. Respondent chose not to file any proposed findings of fact or conclusions.

The witnesses who gave oral testimony on behalf of petitioner were as follows:

Norman Berkshire of Elkhart, Indiana, is employed as a grade school teacher in the Brandywine Public School System near Niles, Michigan. (Tr. 51, 102.) He joined the Communist Party sometime after November 9, 1955, and was a member of the Communist Party of the United States of America at the time of the evidentiary hearing. (Tr. 51, 122-123, 129-133.) He was also a member of the Indiana Communist Party, a division of the National

Communist Party, and was a member of the State Committee of the Communist Party of Indiana.³ (Tr. 51-52, 156.) The witness reported to the Federal Bureau of Investigation on the Communist Party and on various activities before and after he joined the Communist Party, and was paid by the F.B.I. for his services and expenses in increasing amounts. (Tr. 119-120, 128, 133-145, 147-154.)

Laurence Stephen Morrison, who currently resides in Washington, D. C., is employed as a reporter for the South Bend, Indiana, Tribune newspaper. (Tr. 74.) At the time of testifying he was on leave of absence from his newspaper attending the Washington Journalism Center on a fellowship. (Tr. 74.) His testimony was limited to statements made to him by respondent during an interview prior to the witness' leave of absence from the South Bend Tribune.

Production of Reports of Petitioner's Witnesses

At the conclusion of the direct examination of petitioner's witness Norman Berkshire there were delivered directly to counsel for respondent by counsel for petitioner the receipts which the witness had signed for money he received from the F.B.I. for the period of time he cooperated with the F.B.I. and the prior written reports made by the witness to the F.B.I. which counsel for petitioner considered to be statements within the purview of Title 18 U.S.C. §3500.⁴ (Tr. 68, 71.) At the same time there were delivered to the Board for in camera examination all reports, numbering 1,469, furnished to the F.B.I. by the witness. (Tr. 70, 73, 98.) These reports were in two categories: (a) handwritten reports of the witness which counsel for petitioner considered did not relate to the witness' direct testimony, and (b) reports which reflect oral information furnished by the witness to the F.B.I. which counsel considered did not relate to the witness' direct testimony and as to which counsel took no position with regard to whether they were statements within the purview of Title 18 U.S.C. §3500. (Tr. 70-71.)

³ During cross-examination it was developed that none of the reports made by the witness to the F.B.I. reflected his being elected to offices in the Party. (Tr. 156-157.) However, his testimony, infra, including that covering a meeting of the State Committee which he attended, and his recognition by respondent as a member of the Committee, stand un rebutted and unchallenged.

⁴ A list of the reports that were turned over directly to counsel for respondent appears at transcript page 69.

Counsel for respondent took the position that any report which mentions or relates to the respondent, whether it relates to the particular meetings about which the witness testified, or anything else concerning respondent must be produced under 18 U.S.C. §3500. (Tr. 71.) Counsel also took the position that any report showing when the witness joined the Communist Party should be produced as well as any report showing when respondent was elected to the position of chairman of the Communist Party of Indiana since the witness Berkshire testified on direct that respondent held that position during the last two years. (Tr. 94-95.)

We agreed that there should be produced reports, if any, showing when the witness joined the Communist Party and those reflecting when he became a leader in his Party, as well as any reports showing when respondent became a member or chairman of the State committee of the Party in Indiana. (Tr. 98.) The Board determined four additional reports to be producible, and they were then turned over to counsel for respondent by counsel for petitioner without excision.⁵ (Tr. 99.)

We rejected the contention that all of the reports concerning respondent are producible, except that we will require production of any reports containing exculpatory matter. Neither the fundamentals of fair play nor the pertinent demands of due process require, in the narrow issue of this case, making available to respondent the hundreds of reports made by the witness that were not in any way remotely related to the events and activities covered by the testimony of the witness. (Tr. 98.) None of the 1,469 reports contained any exculpatory matter. (Tr. 98-99.)

Counsel for respondent noted his objection to the failure of the Board to produce all reports which mention or relate to the respondent. (Tr. 71, 99.) The objection was overruled and the reports were ordered sealed and marked as "Board Exhibit 1, Boorda Case, Witness Berkshire." (Tr. 100.)

As to the witness Laurence Morrison, counsel for petitioner turned over to counsel for respondent abbreviated notes which the witness took when he conducted his interview with respondent. (Tr. 81.) These notes were marked Government Exhibit B for identification.⁶ (Tr. 81.) Another document, prepared by a special agent of the F.B.I. following his interview with the witness Morrison was voluntarily turned over to counsel for respondent after the excision of purely administrative data. (Tr. 81-82.)

⁵ These reports are listed at transcript page 99.

⁶ The original notes were withdrawn and copies were substituted with agreement of counsel for respondent. (Tr. 100.)

Evidence of Respondent's Communist Party Membership

Petitioner's witnesses Norman Berkshire and Laurence Stephen Morrison identified Simon Boorda as the respondent in this proceeding from their own personal knowledge. (Tr. 52, 67, 75-76.) Berkshire testified to specific meetings of constituent organizational parts of the Communist Party of the United States of America which he attended and at which respondent Boorda was among those present and participating. (Tr. 52-67.) Morrison testified to a telephone interview he had with respondent regarding the action of the Justice Department in proceeding against him as a member of the Communist Party. (Tr. 75-80.) No witnesses were presented by respondent to rebut or contradict the testimony given by petitioner's witnesses. The Board, having observed the witnesses as they testified, and having reviewed their testimony, including that elicited on cross-examination, credits the witnesses.

Findings of Fact

On or about October 28, 1966, respondent attended a Communist Party meeting at the home of a Communist Party member in South Bend, Indiana, which was restricted to Communist Party members. (Tr. 52-54.) Several items were on the agenda at this meeting, one of which consisted of a report given by petitioner's witness Berkshire about activities in the voters' peace pledge campaign which was a project of the Committee for a Sane Nuclear Policy. (Tr. 53, 138-139.) The nature of the campaign was an attempt to obtain the signatures of voters to pledge not to vote for any candidate in that election year who supported the war in Vietnam. (Tr. 53, 139.) Another item on the agenda consisted of a report by a Party member on her activities in the Women's International League for Peace and Freedom. (Tr. 53.) The respondent gave a report concerning security in which he spoke about the need for strict security at Party meetings and also scolded two of those present for having phoned him that day to confirm the time of the meeting, pointing out that such meetings had to have complete security. (Tr. 53.) During the latter part of the meeting there was talk about the great need for an organizer in the State of Indiana since the State had not had one for some time. (Tr. 54.) Respondent spoke about the possibility of getting such an organizer but it was uncertain at that time as to whether or not it would be possible. (Tr. 54.)

Around the middle of November 1966, a Communist Party meeting was held at the home of respondent with approximately six people in attendance, including respondent. (Tr. 54-55.) The most important item on the agenda was the question of an organizer for the State of Indiana. (Tr. 55.) There was considerable discussion on this point and respondent stated that he felt

very strongly that the State should have such an organizer and was suffering for not having one and that it would be possible to get such an organizer from the national Party but that the members of the Party in the State of Indiana would somehow have to subsidize such an organizer about \$100 a month in expenses as a minimum. (Tr. 55-56.) During the discussion it was suggested that a cumulative fund be set up to defray the \$100 a month expense, and respondent accepted and solicited contributions from the members. (Tr. 56.) Respondent also collected dues at this meeting. (Tr. 56.)

During May 1967 respondent attended an area Communist Party meeting at the home of a Communist Party member in Niles, Michigan, at which three other Communist Party members were present.⁷ (Tr. 56-58.) During the course of the meeting respondent stated he was especially disturbed about what he described as the Trotskyite and deviationist tendencies of some students at Notre Dame and Indiana University who were engaged in various peace movements which he had been working with. Respondent also stated that a Mr. James West would be coming into the area in the near future. (Tr. 58.)

The home of respondent was the location of another Communist Party meeting in the early part of June 1967. (Tr. 60.) A number of things were on the agenda for this meeting. (Tr. 60.) Mr. James West spoke of his activities around the country for the Communist Party. (Tr. 60.) The question of an organizer for the State of Indiana was then brought up and there was discussion regarding the difficulties involved in getting an organizer. (Tr. 61.) Mr. West made the suggestion that respondent be appointed temporary organizer for the State of Indiana and after discussion by those present it seemed to be acceptable and Mr. West appointed respondent to that position. (Tr. 61.) Since his appointment respondent has served continuously as temporary state organizer until at least the date of the hearing on September 11, 1968. (Tr. 61.)

In the early part of February 1968 respondent and his wife met with petitioner's witness Berkshire at the latter's home in Elkhart, Indiana. (Tr. 51, 61-62.) Respondent had a number of Communist periodicals with him such as Political Affairs, Party Affairs, and a couple of unidentified booklets which he sold to the witness Berkshire. (Tr. 62.) Respondent spoke at length about the new Communist Party newspaper Daily World which had taken the place of The Worker and stated he had made a large pledge to the Daily World to help insure its publication. (Tr. 62.) Respondent also solicited a pledge from the witness Berkshire and was told that at the time he

⁷ An area Communist Party meeting is a meeting attended by persons from the various cities or counties of the area involved. (Tr. 57.)

didn't have the money but would see what he could do. (Tr. 62.) During the conversation respondent discussed a State Party meeting which had been held in Indiana concerning the possibility of launching a Peace and Freedom Party as a third party in Indiana. (Tr. 62-63.) The witness Berkshire told respondent he was annoyed at not being notified of the meeting, stating that as a member of the State Committee of the Party he should have been notified whether or not he could attend. (Tr. 63.) In reply respondent told the witness Berkshire he would notify him of any future meetings. (Tr. 63.)

The witness Berkshire was later notified of a State Committee meeting of the Communist Party of Indiana and attended the meeting which was held on March 31, 1968. (Tr. 63-64.) There were approximately twelve people in attendance at this meeting including respondent. (Tr. 64.) A number of things were on the agenda for the meeting but being an election year the political question was the big item. (Tr. 64.) There was also discussion about the National Convention of the Communist Party which was to be held in New York on July 4 through July 7. (Tr. 65.) It was brought out that it would be necessary to hold another Party meeting before the convention in order to choose at least one delegate and one alternate delegate to the convention. (Tr. 65.) Mr. West stated that because of the expense at the convention it was going to be necessary for all Party members in Indiana to pay an assessment equal to two months dues. (Tr. 65.)

A subsequent Communist Party meeting, to select delegates and alternates to the national convention of the Communist Party, was held at the home of respondent on June 30, 1968, with respondent in attendance. (Tr. 65-66.) During the course of the meeting respondent was chosen by those present as a delegate to the National Convention of the Communist Party to be held in New York on July 4 through July 7. (Tr. 66-67.)

On July 2, 1968, in his capacity as a reporter and pursuant to an assignment given him by his employer, the South Bend Tribune, petitioner's witness Laurence Morrison conducted a telephone interview with respondent in South Bend, Indiana, regarding a United Press International Wire Service story which contained respondent's name. (Tr. 74-75.) During the course of the interview, and in answer to the specific question, "Are you a member of the Communist Party?", respondent stated, "I am a member of the Party." (Tr. 76-77.) In response to the question, "How long have you been a member of the Communist Party?", respondent replied, "I have had an association for about 25 years." (Tr. 77-78.) When asked, "Why are you a Communist?", respondent replied, "Well, for the solutions the Party offers to the nation's problems." (Tr. 78.) Elaborating, respondent described those problems to be the tax situation, the tax system, a wrong foreign

policy, and the problems of the ghettos and the inner cities. (Tr. 78.) Being specific respondent stated that taxes hit the poor the most and it was his thought that we should get out of Vietnam, which policy he was opposed to, and take the money which otherwise might be spent there and spend it here, especially in the cities. (Tr. 78.) Respondent further stated that the Party offers peaceful and democratic solutions to the nation's problems. (Tr. 78.) During the course of the interview respondent also stated that he has been and continues to be a spokesman for the Party in Indiana and speaks for the Party on a Statewide basis. (Tr. 77, 89-90, 93.) Toward the end of the interview respondent stated he was about ready to leave for the National Convention of the Communist Party in New York City over the July 4th week-end. (Tr. 79.)

Conclusions as to Membership

The facts which we have found above stand undenied, un rebutted and uncontradicted. They are specific, direct, timely and substantial. Based upon these facts, we find that respondent, Simon Boorda, had the desire and intent to be a member of the Communist Party of the United States of America and that he has been recognized and accepted as a member by the Party. We conclude that respondent is a member of said Communist Party.

Legal Questions

1. Communist Party as a Communist-action Organization

We have determined supra that respondent is a member of the Communist Party of the United States. There is in effect a final order of the Board determining the Communist Party to be a Communist-action organization. 1 S.A.C.B. 29; Communist Party v. Subversive Activities Control Board, 367 U.S. 1 (1960); 26 Federal Register 9923 (October 21, 1961); 33 Federal Register 4538 (March 14, 1968).⁸ It follows that respondent is a member, in the words of the statute, "of an organization which has been determined by final order of the Board to be a Communist-action organization."

Counsel for respondent contends, however, that respondent was not a party to the proceedings in which the Communist Party was determined to be an action organization and therefore is not and cannot be bound by that determination. The contention is without merit. There is ample authority for holding applicable to this respondent, who is a member of and leader in the Party, the decision of the Supreme Court that the Party is a Communist-

⁸ The finding that the Party is an action organization is based upon official notice of the pertinent Board orders and court decisions. See tr. 44-46; 159-160.

action organization within the meaning of the statute. As in Jefferson School of Social Science v. S.A.C.B., 331 F.2d 76 (C.A.D.C., 1963) privity has been established and the finding of the Supreme Court in respect to the Party estopped respondent from relitigating the identical issue determined in the prior case. In addition, see Weinstock v. S.A.C.B., 331 F.2d 75 (C.A.D.C., 1963); National Council of American-Soviet Friendship, Inc. v. S.A.C.B., 322 F.2d 375 (C.A.D.C., 1963); Albertson and Proctor v. S.A.C.B., 332 F.2d 317 (1964) rev. on other grounds, 382 U.S. 70.

Moreover, the statute provides specific, and we believe exclusive, means for reexamining the status of the Communist Party as an action organization. Section 13(b), as amended, provides:

"Any organization as to which there is in effect a final order of the Board determining it to be a Communist-action organization . . . may, not more often than once in each calendar year, file with the Board and serve upon the Attorney General a petition for a determination that such organization no longer is a Communist-action . . . organization."

A similar provision was in the statute when the Supreme Court in 1961 decided the Communist Party case. In answer to the argument that the Act is a bill of attainder, the Court noted that the provision under which the Party could petition the Board for a redetermination of the Party's amenability to the Act, provides adequate means of relief. 367 U.S. at 87. There has never been any petition filed in the Board by or on behalf of the Party for determination that the Party's status has changed.

Counsel for respondent further, and separately, argues that we should take official notice that the world Communist movement, as described in section 2 of the Act, if it ever existed, no longer exists; that there cannot, therefore, be any Communist-action organization, and the Board's orders finding that the Communist Party is a Communist-action organization are invalid. (Tr. 46-50.)

A brief explanation of background is desirable in considering this argument. In the Communist Party case, the Board recognized that in section 2 of the Act Congress found the existence of a world Communist movement and described its characteristics. The Board set forth its own description, based on the evidence of record, of contemporary Communist institutions in their international aspect, and particularly the role of the Soviet Union in those institutions. The Board concluded that the Communist Party, U.S.A., "is substantially directed, dominated, and controlled by the

Soviet Union, which controls the world Communist movement referred to in section 2 of the Act, and operates primarily to advance the objectives of such world movement." 1 S.A.C.B. at 294. The Supreme Court affirmed.

Respondent argues that many leading statesmen and others have repeatedly stated that the notion that there exists such a world Communist movement, a monolithic movement under the control of the Soviet Union, is entirely mythological. (See, tr. 48-49.) We are requested officially to notice this asserted situation.

Under the holding of the Supreme Court in Communist Party v. S.A.C.B., 367 U.S. 1, we are precluded from reexamining in proceedings before us, the congressional findings that there exists a world Communist movement, that it is directed by the Communist dictatorship of a foreign country, and that it has certain designated objectives. "The characteristics of the movement and the source of its control are not to be established by the Attorney General in proceedings before the Board, nor may they be disproved." 367 U.S. at 112. The Court seemed to recognize, however, that changed circumstances in future years, in a future world situation, might warrant the Board or a reviewing court in construing the statute so as to conclude that the Soviet Union is no longer the foreign government referred to in section 2 of the Act, or that the world Communist movement, as Congress meant the term in 1950, no longer exists (page 113). It is on this hypothesis of the Court that respondent relies.

We believe that in the context of the opinion, the hypothesis of the Court is limited to proceedings under the Communist-action provisions of the Act and does not negate or modify the principle enunciated in Jefferson School and other cases, supra, that precludes this respondent from litigating in this proceeding the current status of the Communist Party. Similar arguments, with respect to the same legislative findings, now made by respondent, were made to a three-judge District Court in this District in 1963 in Flynn v. Rusk, 219 F. Supp. 709, and in 1968 in W.E.B. DuBois Clubs, et al v. Ramsey Clark, et al. The argument was specifically rejected in the Flynn case, and, after the filing of legal memoranda by the parties, was ignored by the Court in the DuBois Clubs case. The point was raised in the Supreme Court without success by the appellants in DuBois. See Jurisdictional Statement for plaintiffs-appellants, No. 515, October Term, 1967, pages 19-22, and 389 U.S. 309 (1967).

However, there are more compelling reasons for our refusal to take official notice, as requested by respondent, that the world Communist movement, as described in section 2 of the Act, no longer exists. Public Law 90-237, amending certain provisions of the Subversive Activities Control

Act of 1950, became effective on January 2, 1968. Therein the Congress specifically reiterated the findings of fact contained in paragraphs (1) through (15) of section 2 of the 1950 Act. (50 U.S.C. 781.)

It certainly is not for this Board to reexamine the validity of the findings which have so recently been reiterated by the Congress and reject them. Nor do we believe that there is any common knowledge that there is no longer a world Communist movement which resembles the movement described in the Act and as construed by the Board in the Communist Party case.

Quite the contrary, we note that in enacting Public Law 90-237 the Congress had before it the October 4, 1967, Report of the House Committee on Un-American Activities entitled, Internal Security Act of 1950 Amendments, on the House version of the bill which became Public Law 90-237. House Report No. 733, 90th Congress, First Session. Pages 10-13 of the Report are devoted to consideration of the Congressional Findings detailed in section 2 of the Subversive Activities Control Act of 1950. Pertinent excerpts from the Report are as follows:

"It is to the world Communist movement dominated by the Soviet Union that the Congress in 1950 directed its concern. That world Communist movement, the subject of findings and a report of the Subversive Activities Control Board, whose findings were upheld by the Supreme Court in the 1961 Communist Party case, continues to exist." (P. 11.)

The House Report discusses differences which have been at times manifested within the world Communist movement, particularly as respects the present leadership of the Communist Party ruling Red China. The Report concludes that even if a permanent break should develop between the Communist parties of the Soviet Union and Red China, it does not follow that the world Communist movement, as Congress meant the term in 1950, will cease to exist, or that the Communist Party of the United States would no longer continue under the domination and control of the Soviet Union.

In our less detailed ruling during the hearing which appears at transcript pages 159 & 160, we refused to officially notice that the movement as described in the 1950 Act no longer exists, and to declare the Board's earlier order invalid. We are not at all, or even slightly, convinced that circumstances have changed as respects the movement and its direction. We

do not, therefore, reach the question of whether we would have the authority in this proceeding to declare invalid the order of the Board which determined the Communist Party, U.S.A., to be a Communist-action organization, and which order was upheld by the Supreme Court, if a substantial showing was made that the world Communist movement as described in section 2 no longer exists.

We have gone to some length in recording our consideration of this matter because it is of first impression as an issue under the amended statutory provisions, and because it is common to a series of seven cases.

2. The Issue as to Electronic Surveillance

Prior to the evidentiary hearing we heard oral argument and thereafter denied a motion of respondent under which we were asked to require petitioner to disclose any electronic overhearing that may have taken place of conversations at the offices of the Communist Party or at the offices or homes of Communist Party members in which conversations respondent did not participate or during which respondent was not present. Subsequently we heard oral argument on a motion to reconsider, and we reaffirmed our previous ruling. A copy of the first ruling is attached hereto as Appendix A, and the ruling on reconsideration as Appendix B. Both rulings are by this reference incorporated herein.

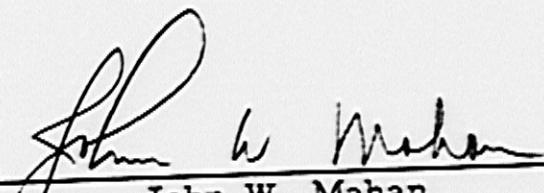
It is to be noted that the evidence presented by petitioner obviously was the independent, first-hand knowledge of the witnesses. The witness Berkshire had been a member of the Communist Party for over 12 years at the time of the hearing, and he testified from his own personal, first-hand knowledge of meetings which he attended. There was no effort made during cross-examination to overcome the clear inference that the witness attended the meetings by reason of his being a member. The witness Morrison, a news reporter, was assigned by his editor to interview respondent after a news release had come to his editor's attention. He testified from his own knowledge as to the contents of his interview with respondent.

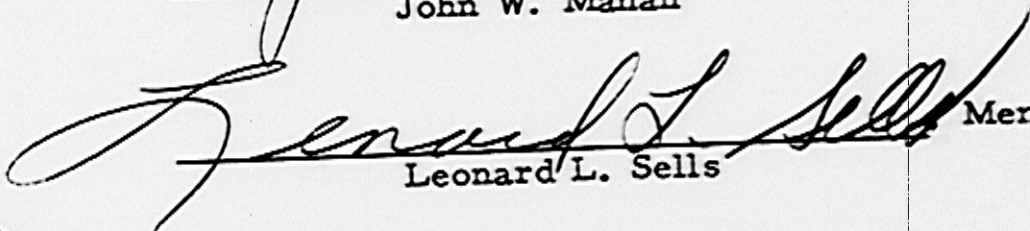
Ultimate Findings and Conclusions

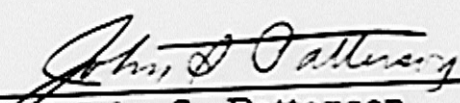
Based upon the foregoing findings and rulings we find and determine from a preponderance of the evidence that respondent, Simon Boorda, is

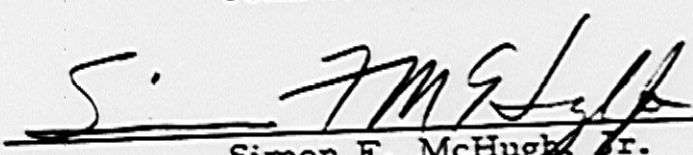
a member of the Communist Party of the United States of America, an organization which has been determined by final order of the Board to be a Communist-action organization. An appropriate order accompanies this Report of the Board. A copy of the Report and Order shall be served upon respondent.

By the Board:


John W. Mahan, Chairman


Leonard L. Sells, Member


John S. Patterson, Member


Simon F. McHugh, Jr., Member



November 15, 1968

Washington, D. C.

APPENDIX A

SUBVERSIVE ACTIVITIES CONTROL BOARD

Docket No. I-50-69

RAMSEY CLARK, ATTORNEY GENERAL
OF THE UNITED STATES,

PETITIONER,

v.

SIMON BOORDA,

RESPONDENT

RULING ON RESPONDENT'S MOTION
FOR PRODUCTION OF OVERHEARD CONVERSATIONS

This is a proceeding on petition of the Attorney General for an order of the Board determining the respondent to be a member of the Communist Party of the United States, a Communist-action organization.¹ Respondent has filed a motion for prehearing inspection and use at the hearing of all records and reports in the possession of the Government of conversations overheard or monitored by means of wire tapping or electronic eavesdropping. The term "conversations" as used by respondent includes every oral communication:

- "1. By or to respondent;
2. By or to any person concerning respondent, whether respondent was identified therein by name, or is otherwise identifiable; and
3. By or to any person who was a member of any section, division, group or committee of the Communist Party of which respondent is or was allegedly a member."

¹ This is one of seven similar petitions, Dockets I-45-69 through I-51-69, which were filed by the Attorney General on July 1, 1968. The seven respondents are represented by the same counsel and an identical motion for production was filed in each case. Identical responses to the motions were filed by petitioner. Our rulings, of course, are also identical.

Petitioner in a written response to the motion stated that, "we have no indication nor any information that there has been any electronic coverage or interception by any means of any conversation or statement by or to Respondent." Petitioner's response then challenged respondent's standing as to categories 2 and 3 of the conversations covered by the motion.

Oral argument on respondent's motion and petitioner's response thereto was heard by the Board on September 3, 1968. We note at the outset that the issue is a rather limited one. Petitioner's written response, as we have said, represents that there has not been any electronic coverage or interception by any means of any conversation or statements by or to respondent. This was further expanded at the oral argument. Counsel for petitioner made the following representations:

"... no conversations were recorded wherein a finding could be made that a respondent was present." (Tr. 14.)

"... the respondents in this case were never overheard in any conversations." (Tr. 19.)

"... the findings couldn't be made that they [respondents] were ever present when a conversation was intercepted." (Tr. 20.)

On the basis of this record we accept as a fact that there has not been any overhearing by the Government of any conversations where respondent was present or participated. The issue then, as stated by counsel for respondent, is that "of standing with respect to eavesdropped conversations, where the person claiming or seeking discovery is not a participant" (tr. 3).

Respondent's motion other than as to conversations in which respondent was present or participated (which it is now established there were none) is quite broad and far-reaching. The request for production extends, in the words of counsel for respondent, to the offices of the Communist Party and the homes and offices of fellow members of the Communist Party, even if respondent was not at one of these places at the time of the overheard conversation. See, e.g., tr. 10.

It is argued that Party members and officers have a special relationship to the offices of the Communist Party and the homes and offices of fellow members, and that Party members are colleagues of each other. This

² We are aware that counsel for respondent does not seek the contents of all such intercepted conversations, only of those which subsequently would be determined to be relevant and material to this proceeding. We are not now involved in determining such relevancy and materiality.

"special relationship" is urged as giving standing with respect to conversations at such premises. Also, that being "colleagues" gives standing as to conversations by and between other colleagues, the same as is extended to codefendants in criminal cases.

As pointed out by counsel for petitioner, this is not a criminal proceeding. Neither is it a civil action as that term describes judicial proceedings. This is an administrative proceeding to determine respondent's status as an alleged member of the Communist Party. We have been cited no authority, and are not aware of any, which supports in a criminal case a broad and sweeping request for disclosure such as here involved, let alone in an administrative proceeding for a determination of status.³ Absent clear or persuasive judicial decision that a respondent in proceedings like this one is entitled to disclosure of intercepted conversations in which respondent did not participate or at which respondent was not present, we will not issue an order recognizing a standing so far-reaching and sweeping as respondent asserts.

Moreover, proof by the Attorney General of respondent's alleged membership in the Communist Party must be specific, direct and timely.⁴ Yet respondent seeks disclosure of all conversations by or to any person concerning respondent, and of all conversations by or to any member of any organizational part of the Communist Party which respondent allegedly is or was a member, all irrespective of when the conversations took place.

The possibility that intercepted conversations which could cover many third persons and extend over many past years could be relevant and material to respondent's alleged current membership in the Communist Party is remote and insubstantial in the circumstances. We fail to see how current membership in the Party could confer standing to require such a far-reaching and sweeping disclosure.

Counsel for petitioner pointed out during oral argument that this is a case in the internal security field wherein the lawful use of electronic surveillance has long been recognized. (Tr. 13.) There is presently no issue and we do not decide whether otherwise producible conversations can be withheld, and under what conditions, if a national security representation is made as to the disclosure. We recognize, however, that broad and sweeping disclosure of surveillances made in the interest of the national security should not be done lightly. In our view, the pertinent demands of a fair hearing and due process do not require giving the respondent broad access to surveillance information involving conversations in which respondent did not participate or at which respondent was not present.

³ Counsel for respondent candidly stated at the beginning of his oral argument that "the law on that subject is wide open" and the whole subject of standing is "up for grabs." (Tr. 3 & 4.)

⁴ Cf., National Council of American-Soviet Friendship, Inc. v. Subversive Activities Control Board, 322 F.2d 375 (C. A. D. C., 1963).

Under the circumstances of this case we do not believe that respondent is entitled to production as to the conversations covered in items 2 and 3 of the motion. There is nothing to order produced under item 1 of the motion.

Accordingly, it is

ORDERED that respondent's motion should be and the same is hereby denied.

By the Board:

(SEAL)

John W. Mahan, Chairman
John W. Mahan

Leonard L. Sells, Member
Leonard L. Sells

John S. Patterson, Member
John S. Patterson

Simon F. McHugh, Jr., Member
Simon F. McHugh, Jr.

September 6, 1968

Washington, D. C.

APPENDIX B

SUBVERSIVE ACTIVITIES CONTROL BOARD

RAMSEY CLARK, ATTORNEY GENERAL OF THE UNITED STATES,
PETITIONER,

v.

ROBERT ARCHULETA, RESPONDENT IN DOCKET NO. I-45-69
WAYNE DALLAS HOLLEY, RESPONDENT IN DOCKET NO. I-46-69
ANNA PASTOR LACONICH, RESPONDENT IN DOCKET NO. I-47-69
RUTH BEER, RESPONDENT IN DOCKET NO. I-48-69
SCARLETT ANN PATRICK, RESPONDENT IN DOCKET NO. I-49-69
SIMON BOORDA, RESPONDENT IN DOCKET NO. I-50-69
SARGEANT CAULFIELD, RESPONDENT IN DOCKET NO. I-51-69

RULING ON RESPONDENTS' MOTION FOR RECONSIDERATION
OF ORDER DENYING MOTION CONCERNING ELECTRONIC SURVEILLANCE

At the hearing on September 11, 1968, in Docket No. I-50-69, counsel for respondent made an oral motion, applicable to each of the seven captioned cases, that the Board reconsider its ruling denying identical motions aimed at disclosure of any electronic overhearing that may have been done by the Government.

Our ruling dealt in substance only with any possible overhearing of conversations in which the respondents did not participate or at which the respondents were not present. We accept the representations of counsel for petitioner that the respondents in these cases were never overheard in any conversations, and that their premises were never the object of any electronic surveillance. We did not in our ruling specifically mention the attorney-client relationship. But it is obvious from the foregoing that there was no overhearing of any conversation by a respondent with an attorney, or by an attorney with a respondent, or by any attorney when a respondent was present. And at the argument on the motion for reconsideration, counsel for petitioner repeated his statement that, "No interceptions have been made of any attorney-client relationships in these cases." (Tr. 14, 32.)

Counsel for respondent, relying mainly on the August 9, 1968, decision of the United States Court of Appeals for the District of Columbia Circuit in *Baker v. United States* (No. 21, 154), urges that as a minimum we

should require production of conversations obtained by eavesdropping on premises in which a respondent has "a special relationship." In the Baker case the defendant was given "standing" as to conversations at which he was not present where he had a key to his business associate's hotel suite, was welcome to use the suite at any time, and did use it for meetings and to make telephone calls.

Here, counsel for respondent would have us extend the "special relationship" principle to give these respondents standing as to any "offices of the Communist Party" and "the homes of fellow members of the Communist Party and the offices of fellow members of the Communist Party" as to conversations when the particular respondent was not present at the time.

The mere contention of counsel that a respondent may be welcome to visit from time to time at the homes and offices of his fellow members of the Communist Party does not in our view give carte blanche standing for prehearing production as to conversations by or to such fellow members when respondent did not participate in the conversations or was not present at the time of the conversations. In the circumstances present in these cases there is no justification for recognizing a standing for prehearing disclosure so broad and sweeping as these respondents assert.¹ We will affirm our previous ruling.

The respondent in each of these cases is represented by attorneys John Abt and Joseph Forer. At oral argument on the motion to reconsider, attorney Forer requested that the Board issue a subpoena directed to the Attorney General and the Director of the Federal Bureau of Investigation to have them produce for the Board all records of any intercepted conversations of himself and co-counsel John Abt. We have previously herein discussed the matter of attorney-client relationship. In the circumstances, the request for a subpoena is clearly a fishing expedition without any reasonable or even remote relationship to the violation of any rights of the respondents.

The request for the issuance of subpoenas will be denied.

It is, therefore,

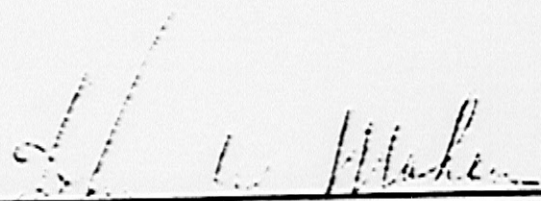
¹ We recognize and accept the proposition that illegally obtained evidence or the fruits thereof have no place in Board proceedings. There may arise situations placing a burden on the Attorney General to establish that proffered evidence was legally obtained from an independent source.

ORDERED that respondents' motion for reconsideration of our ruling of September 6, 1968, is denied and the ruling is reaffirmed.

FURTHER ORDERED that in the circumstances respondents' request that we subpoena the Attorney General and the Director of the Federal Bureau of Investigation is denied.

By the Board:

(SEAL)



John W. Mahan
Chairman

September 17, 1968

Washington, D. C.

SUBVERSIVE ACTIVITIES CONTROL BOARD

Docket No. I-50-69

RAMSEY CLARK, ATTORNEY GENERAL OF THE UNITED STATES,

PETITIONER,

v.

SIMON BOORDA,

RESPONDENT

ORDER

The Board, after full hearing upon a petition of the Attorney General, having this day issued its findings as to the facts, and having determined that the respondent is a member of the Communist Party of the United States of America, it is

ORDERED that the petition of the Attorney General be and the same is hereby granted and the respondent, Simon Boorda, is found and determined to be a member of the Communist Party of the United States of America, a Communist-action organization, pursuant to the provisions of section 13(a) of the Subversive Activities Control Act of 1950, as amended, and it is

FURTHER ORDERED that a copy of this ORDER be served upon the respondent, Simon Boorda.

By the Board:



John W. Mahan, Chairman
John W. Mahan

Leonard L. Sells, Member
Leonard L. Sells

John S. Patterson, Member
John S. Patterson

Simon F. McHugh, Jr., Member
Simon F. McHugh, Jr.

November 15, 1968

Washington, D. C.

SUBVERSIVE ACTIVITIES CONTROL BOARD

RAMSEY CLARK, ATTORNEY GENERAL OF THE UNITED STATES,
PETITIONER,

v.

ROBERT ARCHULETA, RESPONDENT IN DOCKET NO. I-45-69
WAYNE DALLAS HOLLEY, RESPONDENT IN DOCKET NO. I-46-69

Oran H. Waterman, Robert A. Crandall, and
Garvin L. Oliver, for petitioner.

John J. Abt and Joseph Forer for respondent.

REPORT AND ORDER

Issued November 21, 1968

SUBVERSIVE ACTIVITIES CONTROL BOARD

RAMSEY CLARK, ATTORNEY GENERAL OF THE UNITED STATES,

PETITIONER,

v.

ROBERT ARCHULETA, RESPONDENT IN DOCKET NO. I-45-69

WAYNE DALLAS HOLLEY, RESPONDENT IN DOCKET NO. I-46-69

REPORT OF THE BOARD

Preliminary Statement

This is a consolidated proceeding on petitions of the Attorney General, filed July 1, 1968, for orders of the Board determining the respondents, Robert Archuleta and Wayne Dallas Holley, to be members of the Communist Party, United States of America, a Communist-action organization, as provided by the provisions of section 13(a) of the Subversive Activities Control Act of 1950, as amended.¹

The petition in each case alleged that there is in effect a final order of the Board determining the Communist Party of the United States of America to be a Communist-action organization and that at the time of the filing of the petition and at all times mentioned therein the respondents, Robert Archuleta and Wayne Dallas Holley, had been members of said Communist Party.² In support of his petitions the Attorney General set forth in paragraphs numbered I through III allegations of fact relating to respondents' Communist Party membership. Regarding respondent Archuleta it was alleged in paragraph I that during the year 1967 he served as Secretary-Treasurer of the Communist Party of Utah. As to respondent Holley, paragraph I alleged that in August

¹ The Board granted an unopposed motion of counsel for respondents that the two cases be consolidated for all purposes. (Tr. 26-27.) Five similar petitions were filed in the Board by the Attorney General at the same time as these petitions were filed. The five cases were assigned docket numbers I-47-69, I-48-69, I-49-69, I-50-69, and I-51-69.

² For convenience the Communist Party of the United States of America will sometimes be referred to herein as "the Communist Party" or the "Party."

Clarence Duane Price of St. George, Utah, is an employee of a lumber company and is also a full time college student. (Tr. 30-31, 82-83.) He joined the Communist Party on April 7, 1967, and was on leave of absence from the Party at the time of the evidentiary hearing. (Tr. 31, 34, 106.) His leave of absence began around the latter part of November 1967. (Tr. 31, 116, 118.) He was a member of Utah District of the Communist Party and also a member of the Party's Salt Lake County Club. (Tr. 31.) In August 1967, he was officially elected Secretary-Treasurer for the State of Utah and thereby automatically became a member of the Executive Board and the State Committee of the State of Utah. (Tr. 32.) The witness reported to the Federal Bureau of Investigation on the Communist Party and on various activities before and after he joined the Party, and was paid by the F.B.I. for his services and expenses in increasing amounts. (Tr. 95-105, 109-117, 121.)

Ronald Eldredge is a piano teacher and resides in Spanish Fork, Utah. (Tr. 56-57, 123.) He joined the Communist Party on January 8, 1967, and was a member of the Party at the time of the evidentiary hearing. (Tr. 57-58, 139-140, 144.) He was a member of the Utah District of the Communist Party, and for approximately one year has held the positions as Secretary-Treasurer of the Party's Utah District, Chairman of Utah County Club of the Party, and membership on the State Committee of the Utah District of the Communist Party. (Tr. 58-59.) The witness reported to the F.B.I. on the Communist Party and on various activities before and after he joined the Party, and was paid by the F.B.I. for his services in increasing amounts, and for his expenses. (Tr. 131-139, 142-147, 149-156, 158.) His wife was also an informant for the F.B.I. having joined the Party sometime in 1967. (Tr. 125, 148-149.) Whatever compensation she received for her services was included in the payments to the witness Eldredge. (Tr. 127, 149.)

Production of Reports of Petitioner's Witnesses

At the conclusion of the direct examination of petitioner's witnesses there were delivered directly to counsel for respondents by counsel for petitioner the receipts each witness had signed for money received from the F.B.I. for the period of time each had been cooperating with the F.B.I. and the prior written reports made by each witness to the F.B.I. which counsel for petitioner conceded related to the direct testimony and thus were within the purview of Title 18 U.S.C. §3500.³ (Tr. 51-52, 55, 74, 78.) At the same time there were

³ A list of reports of the witness Price which were turned over to counsel for respondents appears at transcript pages 52-54; a list of the reports of the witness Eldredge appears at transcript pages 76-77.

the Communist Party. (Eldredge, Tr. 61.) During the course of the meeting respondent Holley stated that he had recently been in contact with the National Headquarters of the Communist Party and they had requested that he furnish them with information concerning an independent campaign of a locally prominent person in Salt Lake City, Utah, for the Congress of the United States. (Eldredge, Tr. 61-62.) The National Headquarters wanted to know if a formal organization had resulted from the campaign, if it was being continued, and whether the campaign made any significant difference in the outcome of the election. (Eldredge, Tr. 62.) In addition the National Headquarters of the Party wanted to know if any potential Party recruits had been contacted and if so, whether they had been recruited. (Eldredge, Tr. 62.) Respondent Holley also stated that he had been in contact with a functionary of the Communist Party of the United States from Los Angeles, California, who told him that he had recently attended a meeting of the National Committee of the Communist Party in New York and offered to come to Utah and report on the outcome of the meeting to the Utah District of the Party. (Eldredge, Tr. 62.) Also during the course of the meeting respondent Archuleta, acting as Secretary-Treasurer of the Utah District of the Communist Party, gave a financial report on the District's treasury. (Eldredge, Tr. 61.)

On April 7, 1967, petitioner's witness Price received a call from respondent Archuleta who invited him to attend a closed Party meeting that evening.⁴ (Price, Tr. 34, 106.) Respondents Archuleta and Holley were both in attendance at this meeting. (Tr. 34.) At the conclusion of the meeting the witness Price was told that he was now officially a member of the Communist Party. (Price, Tr. 34.) Respondent Archuleta assigned the witness Price to the Salt Lake County Club of the Party of which Archuleta was a member. (Price, Tr. 34.)

The home of respondent Archuleta was the location of a closed meeting of the Salt Lake County Club of the Communist Party on April 28, 1967. (Price, Tr. 34.) Respondent Archuleta was in attendance at this meeting. (Price, Tr. 34.) During a discussion on recruitment it was stated that there was a membership drive on and that an attempt should be made to contact inactive Party members as well as people who had been friendly to the Party and who were also inactive in an effort to build up the membership. (Price, Tr. 35-36.) Respondent Archuleta told petitioner's witness Price that he would be required to pay fifty cents a month as Party dues and that he would probably be put in charge of taking care of the Party's post box. (Price, Tr. 36.)

⁴ A closed Party meeting is one which is closed to anyone who is not a member of the Communist Party or who is not invited as a recruit. (Price, Tr. 34, 107-108.)

1967 he was reelected Chairman of the Communist Party of Utah and has continued to serve in that capacity. Paragraphs II and III in both petitions were identical, alleging that during 1967 and 1968 respondents on divers occasions attended meetings of the Communist Party, the attendance at which was restricted to members of the Communist Party; and that during 1967 and 1968 respondents on divers occasions advised and imparted information to Party members regarding Communist Party teachings, business, and policy.

On July 22, 1968, both respondents filed identical answers to the petitions, attacking the constitutionality of section 13(a) and section 13(g) of the Act; denying the allegation that the Communist Party of the United States of America is a Communist-action organization; and relying upon the First Amendment and upon the privilege against self-incrimination in refusing to answer the allegation that each respondent was and continues to be a member of the Communist Party and the allegations of paragraphs I to III, inclusive, of the petitions. Under rule 201.7(a) of the Board's Rules of Procedure, as revised, the reliance upon the constitutional privilege against self-incrimination in respondents' answers operates as a denial for the purpose of this consolidated proceeding.

In this consolidated case and in the five similar cases referred to in footnote 1, identical preliminary motions were filed by the respondents involving disclosure of possible electronic surveillance. We discuss this matter under the heading "Legal Questions," infra. We also consider, infra, an identical issue in each of the cases predicated upon respondents' assertion that the world Communist movement, as described in section 2 of the Act, no longer exists. A motion to dismiss this consolidated proceeding on the asserted ground of invasion of attorney-client relationship will likewise be treated under the heading "Legal Questions," infra.

The evidentiary hearing was held on October 1 and 2, 1968, at Washington, D. C., before the full Board. Counsel for petitioner presented the oral testimony of two witnesses. Respondents presented no witnesses or other evidence except one exhibit which was received in evidence as Respondents' Exhibit No. 1 in connection with the asserted invasion of attorney-client relationship. (Tr. 170.) On October 17, 1968, petitioner filed and served proposed findings of fact consisting of thirty numbered paragraphs. Counsel for respondents chose not to file any proposed findings of fact or conclusions. (Tr. 82.)

The witnesses who gave testimony on behalf of petitioner were as follows:

Clarence Duane Price of St. George, Utah, is an employee of a lumber company and is also a full time college student. (Tr. 30-31, 82-83.) He joined the Communist Party on April 7, 1967, and was on leave of absence from the Party at the time of the evidentiary hearing. (Tr. 31, 34, 106.) His leave of absence began around the latter part of November 1967. (Tr. 31, 116, 118.) He was a member of Utah District of the Communist Party and also a member of the Party's Salt Lake County Club. (Tr. 31.) In August 1967, he was officially elected Secretary-Treasurer for the State of Utah and thereby automatically became a member of the Executive Board and the State Committee of the State of Utah. (Tr. 32.) The witness reported to the Federal Bureau of Investigation on the Communist Party and on various activities before and after he joined the Party, and was paid by the F.B.I. for his services and expenses in increasing amounts. (Tr. 95-105, 109-117, 121.)

Ronald Eldredge is a piano teacher and resides in Spanish Fork, Utah. (Tr. 56-57, 123.) He joined the Communist Party on January 8, 1967, and was a member of the Party at the time of the evidentiary hearing. (Tr. 57-58, 139-140, 144.) He was a member of the Utah District of the Communist Party, and for approximately one year has held the positions as Secretary-Treasurer of the Party's Utah District, Chairman of Utah County Club of the Party, and membership on the State Committee of the Utah District of the Communist Party. (Tr. 58-59.) The witness reported to the F.B.I. on the Communist Party and on various activities before and after he joined the Party, and was paid by the F.B.I. for his services in increasing amounts, and for his expenses. (Tr. 131-139, 142-147, 149-156, 158.) His wife was also an informant for the F.B.I. having joined the Party sometime in 1967. (Tr. 125, 148-149.) Whatever compensation she received for her services was included in the payments to the witness Eldredge. (Tr. 127, 149.)

Production of Reports of Petitioner's Witnesses

At the conclusion of the direct examination of petitioner's witnesses there were delivered directly to counsel for respondents by counsel for petitioner the receipts each witness had signed for money received from the F.B.I. for the period of time each had been cooperating with the F.B.I. and the prior written reports made by each witness to the F.B.I. which counsel for petitioner conceded related to the direct testimony and thus were within the purview of Title 18 U.S.C. §3500.³ (Tr. 51-52, 55, 74, 78.) At the same time there were

³ A list of reports of the witness Price which were turned over to counsel for respondents appears at transcript pages 52-54; a list of the reports of the witness Eldredge appears at transcript pages 76-77.

delivered to the Board for in camera examination 485 reports representing other information furnished to the F.B.I. by the witnesses. (Tr. 55, 74-75, 80.) These reports were in two categories: (a) handwritten reports of each witness which counsel considered did not relate to the direct testimony of each witness, and (b) reports which reflect oral information furnished by each witness to the F.B.I. which counsel considered did not relate to the direct testimony of each witness but as to which counsel took no position with regard to whether they were statements within the purview of Title 18 U.S.C. §3500. (Tr. 55, 75.)

Following its in camera examination the Board determined that there were no other reports of the witness Price which related to the subject matter of his direct testimony. (Tr. 80.) As to the witness Eldredge, it was determined that one additional oral report related to the subject matter of his direct testimony and after granting petitioner's request for the excision of administrative data the report was ordered turned over to counsel for respondents. (Tr. 80-81.) Counsel for respondents noted his objection to all the rulings of the Board regarding the reports of each witness. (Tr. 81.) The objection was overruled and the documents were ordered sealed and marked as follows: the Price documents "Archuleta, Holley, consolidated case, Board Exhibit 1, Witness Price"; the Eldredge documents "Archuleta, Holley, consolidated case, Board Exhibit 2, Witness Eldredge." (Tr. 81.)

Evidence of Respondents' Communist Party Membership

Petitioner's witnesses Clarence Duane Price and Ronald S. Eldredge identified Robert Archuleta and Wayne Dallas Holley as the respondents in this consolidated proceeding from their own personal knowledge. (Tr. 32-33, 59-60.) Both witnesses testified to specific meetings of constituent organizational parts of the Communist Party of the United States of America which they attended and at which respondents were present and participated. (Tr. 34-51, 60-74.) Neither respondent presented any witnesses to rebut or contradict the testimony given by petitioner's witnesses. The Board, having observed the witnesses as they testified, and having reviewed their testimony, including that elicited on cross-examination, credits the witnesses.

Findings of Fact

On January 8, 1967, a meeting of the Utah District of the Communist Party was held at the home of respondent Holley in Mapleton, Utah. (Eldredge, Tr. 61, 140.) Both respondents were present at this meeting which was restricted to members of the Communist Party. (Eldredge, Tr. 61-62.) Respondent Holley introduced petitioner's witness Eldredge to those present as a new member of the organization and the witness was formally accepted into

the Communist Party. (Eldredge, Tr. 61.) During the course of the meeting respondent Holley stated that he had recently been in contact with the National Headquarters of the Communist Party and they had requested that he furnish them with information concerning an independent campaign of a locally prominent person in Salt Lake City, Utah, for the Congress of the United States. (Eldredge, Tr. 61-62.) The National Headquarters wanted to know if a formal organization had resulted from the campaign, if it was being continued, and whether the campaign made any significant difference in the outcome of the election. (Eldredge, Tr. 62.) In addition the National Headquarters of the Party wanted to know if any potential Party recruits had been contacted and if so, whether they had been recruited. (Eldredge, Tr. 62.) Respondent Holley also stated that he had been in contact with a functionary of the Communist Party of the United States from Los Angeles, California, who told him that he had recently attended a meeting of the National Committee of the Communist Party in New York and offered to come to Utah and report on the outcome of the meeting to the Utah District of the Party. (Eldredge, Tr. 62.) Also during the course of the meeting respondent Archuleta, acting as Secretary-Treasurer of the Utah District of the Communist Party, gave a financial report on the District's treasury. (Eldredge, Tr. 61.)

On April 7, 1967, petitioner's witness Price received a call from respondent Archuleta who invited him to attend a closed Party meeting that evening.⁴ (Price, Tr. 34, 106.) Respondents Archuleta and Holley were both in attendance at this meeting. (Tr. 34.) At the conclusion of the meeting the witness Price was told that he was now officially a member of the Communist Party. (Price, Tr. 34.) Respondent Archuleta assigned the witness Price to the Salt Lake County Club of the Party of which Archuleta was a member. (Price, Tr. 34.)

The home of respondent Archuleta was the location of a closed meeting of the Sale Lake County Club of the Communist Party on April 28, 1967. (Price, Tr. 34.) Respondent Archuleta was in attendance at this meeting. (Price, Tr. 34.) During a discussion on recruitment it was stated that there was a membership drive on and that an attempt should be made to contact inactive Party members as well as people who had been friendly to the Party and who were also inactive in an effort to build up the membership. (Price, Tr. 35-36.) Respondent Archuleta told petitioner's witness Price that he would be required to pay fifty cents a month as Party dues and that he would probably be put in charge of taking care of the Party's post box. (Price, Tr. 36.)

⁴ A closed Party meeting is one which is closed to anyone who is not a member of the Communist Party or who is not invited as a recruit. (Price, Tr. 34, 107-108.)

During a discussion on literature the witness Price was told he should subscribe to the publication Political Affairs. (Price, Tr. 37.) In this connection respondent Archuleta told the witness Price that, being a new member of the Party, he should become more familiar with its programs and some of the people who were doing the writing. (Price, Tr. 37.) The witness Price subscribed to the publication. (Price, Tr. 37.)

On May 13, 1967, respondents Archuleta and Holley attended a closed meeting of the Communist Party at the home of respondent Archuleta. (Price, Tr. 37.) During a discussion on the forthcoming convention of the Communist Party in New York, respondent Holley stated that he had received word that there would be a convention and that he had been instructed to attend. (Price, Tr. 37-38.) However, due to the fact that his work schedule had changed he stated he would be unable to go and that a couple of other Party members should plan on going. (Price, Tr. 38.) Respondent Archuleta, acting Secretary-Treasurer, received a directive from the headquarters in New York City stating that records should be kept regarding who was paying dues and the amount and that fifty percent of the dues collected should be sent to the home office in New York City. (Price, Tr. 38.) Respondent Archuleta produced the financial records which he had been keeping on scratch paper and stated his bookkeeping left much to be desired. (Price, Tr. 38-39.) A discussion ensued regarding the witness Price taking over this position because of his accounting background in school. (Price, Tr. 38-39.) During a discussion on recruitment respondent Archuleta asked the views of those present as to the possibility of setting up a meeting to find out if two individuals, who were friendly to the Party and with whom he had been in contact, would like to join the Party. (Price, Tr. 39.) Regarding the distribution of Party reading material the witness Price was asked if he would start handing out issues of Political Affairs to members in the State who were receiving them. (Price, Tr. 39.) In addition the witness Price was asked to place five copies of the publication a month in one of the bookstores in Salt Lake City and pick up the receipts. (Price, Tr. 39.) A suggestion was made during the course of the meeting that the witness Price start handling the Party's post box since the person who had been taking care of it for a number of years had died and since respondent Archuleta, who had been doing it, was unable to do it on a frequent basis. (Price, Tr. 38.)

The witness Price was assigned to handle the Party's post office box and was given the only key to the box in Salt Lake City at a closed Party meeting at the home of respondent Archuleta on May 20, 1967. (Price, Tr. 40.) Respondents Archuleta and Holley were both present at this meeting. (Price, Tr. 40.) In receiving the assignment the witness Price was told that from

that time forth he was to pick up the mail every day. (Price, Tr. 40.) The suggestion was made that, for security reasons, he should go over the mail with respondent Archuleta and decide what mail should be generally sent out to other Party members and what should be delivered personally. (Price, Tr. 40.) During a discussion on security it was brought out that a person in Salt Lake City, not a member of the Party, stated that one of the members of the Salt Lake County Club of the Party was possibly working for the F.B.I. (Price, Tr. 40-41.) The club member so identified was quite upset and a lengthy discussion ensued. (Price, Tr. 41.) After a vote it was decided that although the person making the accusation was not working for the F.B.I. he should not be admitted to any Party activities in the area although Party members should continue to be friendly with him and help him in the publication of a paper he was putting out. (Price, Tr. 41.) The forthcoming convention of the Communist Party in New York City was also discussed and respondent Holley stated that because the date had been changed he would be going as one of the delegates and suggested that either the witness Price or another younger member should plan on going. (Price, Tr. 41-42.) After a discussion it was decided that the other young member should go if possible. (Price, Tr. 42.) During a discussion on recruitment respondent Archuleta stated that one of the two recruits he had been working with was coming along to the point where it might be advantageous if a special meeting were set up to see how the individual felt about the Party and about joining the Party. (Price, Tr. 42.)

On June 28, 1967, at the home of respondent Archuleta, petitioner's witness Price was assigned the position of acting Secretary-Treasurer. (Price, Tr. 42.) Respondent Archuleta turned the financial records over to the witness Price and told him he would be just acting in that capacity until a State Convention could be arranged, at which time the witness Price would be elected to the position of Secretary-Treasurer.⁵ (Price, Tr. 42-43.)

Respondents Archuleta and Holley were both in attendance at a closed meeting of the Communist Party on July 15, 1967, at Liberty Park in Salt Lake City. (Price, Tr. 43.) The items on the agenda for this meeting consisted of a forthcoming New Politics Convention, security, dues, and recruitment. (Price, Tr. 44.) Respondent Holley handed out leaflets regarding the New Politics Convention to be held in Chicago and stated that the major issues which would be discussed at that convention had been discussed at the Communist Party Convention in New York City which he had attended. (Price, Tr. 44.) During a discussion on security respondent Archuleta stated that he

⁵ The witness Price thereafter served as Secretary-Treasurer of the Communist Party of Utah until shortly before he left the Salt Lake City area in November 1967. (Price, Tr. 43.)

had attended a meeting of a political group at the University of Utah and had been shunned at the meeting but could not understand why he had been shunned. (Price, Tr. 44.) He further stated that following the meeting another Party member, on official leave of absence, told him that Navy Intelligence had approached a University of Utah student who was attending school under the Navy program, and told the student that he was associating with known Communists. (Price, Tr. 44.) Although the student did not know all the individuals who were mentioned he did know the respondents Archuleta and Holley. (Price, Tr. 44.) As a result of this the group had shunned respondent Archuleta during the meeting. (Price, Tr. 44-45.) Respondent Archuleta stated, however, that a motion was later made to let anybody work in the political group who wanted to and he was again accepted into the group. (Price, Tr. 45.) Continuing with the discussion on security respondent Holley asked the witness Price if he ever had the "Feds" call on him. (Price, Tr. 45, 119-120.) A discussion then ensued as to what the witness should say if he were contacted. (Price, Tr. 45.) The witness Price was told he should tell the agent that he didn't know who they were, didn't know what they wanted, and state that they were trying to intimidate him, harass him, and ruin his character. (Price, Tr. 45.) Other members of the group related their experiences with an agent. (Price, Tr. 45.) Regarding dues respondent Holley stated that he had been instructed that the two delegates who went to the convention in New York City would have fifty percent of their dues returned to them but since it had not been done he suggested that some arrangement be made. (Price, Tr. 45.) Everyone decided that respondent Holley would be paid \$100 out of the State dues money, representing half of the expenses, with the remainder to be forwarded to the home office in New York. (Price, Tr. 38, 45.) Because of a depletion in the funds, however, this would take some time so a letter was drafted and sent to a member who was head of Party finances at the headquarters in New York. (Price, Tr. 45-46.) During a discussion on recruitment respondent Archuleta suggested that the group give its opinion as to whether he should contact one of the two recruits he had been working with and make him aware of the security situation and what would be expected of him as a member of the Party. (Price, Tr. 46.)

A Utah State Communist Party convention was held at the home of respondent Holley on August 25, 1967. (Price, Tr. 46, 107-108.) This meeting was closed to anybody but Party members except for one recruit who was present and was admitted to the Party at the meeting. (Tr. 46, 107-108.) The members present were asked to pay their dues in order that respondent Holley could begin to be paid back the amount he had coming to him for expenses to the Party convention in New York City. (Price, Tr. 45, 47.) Respondent Holley and other members paid dues at this meeting. (Price, Tr. 47.) Respondent Archuleta nominated the new recruit who was present for membership into the State organization. (Price, Tr. 48.) The nomination was seconded and by a unanimous vote the person was accepted into the State organization and assigned to the Salt Lake County Club. (Price, Tr. 48.) Elections to Party offices were

also held at this meeting. (Price, Tr. 48-49.) Prior to the nomination for the position of State Chairman, respondent Holley, who chaired the meeting, stated that he had held this office for a number of years and that it might be advantageous from an experience point of view if someone else was given the opportunity to function in this office. (Price, Tr. 48-49.) Two people were nominated, a secret written ballot was taken, and respondent Holley received all but one vote. (Price, Tr. 49.) Respondent Holley said he would continue to function as State Chairman for another year and do the job as he had done in the Past. (Price, Tr. 49.) Prior to nominations for the position of Secretary-Treasurer the Communist Party constitution was consulted to see how long a person had to be in the Party in order to run for elected office. (Price, Tr. 48-49.) Since the time period was one year a vote was taken, which was unanimous, to waive the provision of the constitution in order that the witness Price could run for that office. (Price, Tr. 48.) The witness Price and another individual were nominated for the position of Secretary-Treasurer and following a secret written ballot the witness Price was elected and accepted the position. (Price, Tr. 49.) Respondent Holley stated that the Executive Board and the State Committee should again be organized because if the group continued to grow it would need more direction. (Price, Tr. 49.) After consulting the Party constitution it was ascertained that the positions of Chairman and Secretary-Treasurer were automatic positions on the Executive Board and the State Committee. (Price, Tr. 49-50.) Elections were then held to fill the remaining positions, and as a result respondent Holley and the witness Price became members of the State Committee and the Executive Board of the Communist Party of the State of Utah. (Price, Tr. 50.)

As Secretary-Treasurer of the Communist Party of the State of Utah, petitioner's witness Price recorded respondent Holley as paying Party dues in the amount of \$16 for the period January 1 through August 31, 1967, and \$6 for respondent Archuleta for the period January 1 through April 30, 1967. (Price, Tr. 50-51.)

On January 5, 1968, respondents Archuleta and Holley attended a meeting of the Utah District of the Communist Party at the home of petitioner's witness Eldredge in Spanish Fork, Utah. (Eldredge, Tr. 63.) The meeting was called for the specific purpose of meeting with a Party functionary from New York City who had been sent to Utah by the Labor Secretary of the Communist Party to report on the developments concerning a Mine, Mill & Smelter Workers' strike against the copper industry. (Eldredge, Tr. 63.) The individual spoke on the strike and how it was affecting the workers and stated that he had recently returned from the Soviet Union where he had been on assignment for four years as a correspondent for the Daily Worker. (Eldredge, Tr. 64.) He also stated that the Communist Party would begin printing a new newspaper

in 1968, and, after describing the paper, stated that it was one of the most significant and important steps the Party had taken in many years and urged those present to support and aid this new activity. (Eldredge, Tr. 64.)

A meeting restricted to members of the State Committee of the Utah District of the Communist Party was held at the home of respondent Archuleta on approximately March 1, 1968. (Eldredge, Tr. 64-65.) Respondent Holley attended this meeting as Chairman of the Utah District of the Communist Party and respondent Archuleta attended the meeting as a member of the State Committee of the Utah District of the Communist Party.⁶ (Eldredge, Tr. 65, 67; Price, Tr. 48-50.) The witness Eldredge had received a bundle of Daily Worker newspapers containing a special report on the Mine, Mill and Smelter Workers' Union strike against the copper industry and there was a discussion about how to circulate these papers among the workers throughout the State. (Eldredge, Tr. 65, 66.) During a discussion on recruiting respondent Holley gave a report on the progress of a Marxist study theory group being held in Utah County and sponsored by the Utah County Club of the Party and stated that he had been in contact with a Brigham Young University student whom he thought was interested in learning more about Communism and Marxism. (Eldredge, Tr. 66.)

The home of petitioner's witness Eldredge in Spanish Fork, Utah, was the location of a meeting of the State Committee of the Utah District of the Communist Party on April 10, 1968. (Eldredge, Tr. 66.) Respondent Holley attended the meeting as Chairman of the Utah District of the Communist Party and respondent Archuleta attended the meeting as a member of the State Committee. (Eldredge, Tr. 64-65, 67; Price, Tr. 48-50.) During the meeting there was a discussion on the subject of organizing in Salt Lake City, Utah, a club of the W.E.B. DuBois Clubs of America. (Eldredge, Tr. 68.) Respondent Archuleta and another individual were given the assignment of contacting the National Headquarters of the W.E.B. DuBois Clubs of America to implement the decision of attempting to organize these clubs in the area. (Eldredge, Tr. 68.) Respondent Archuleta was also given the assignment of

⁶ Counsel for respondents contended that no foundation had been laid as respects the witness Eldredge's knowledge of the capacities in which respondents attended these meetings. (Tr. 67.) The witness was himself a member of the State Committee and therefore was in a position to know the chairman and other members present at committee meetings. The testimony was undenied and un rebutted, and was corroborated by the testimony of the witness Price, supra. Eldredge also testified that Archuleta attended the meeting in the additional capacity of educational director of the Party's Salt Lake Club. Lacking further explanation, we do not believe that standing alone and unbuttressed this warrants our making the finding.

reestablishing an agreement with a local news stand dealer to allow the Communist Party to sell Party literature through his store. (Eldredge, Tr. 68.) Another assignment given to respondent Archuleta was to arrange a meeting between the State Committee of the Party and an individual who had requested a leave of absence from the Party. (Eldredge, Tr. 68-69.) Respondent Holley stated he felt that, if possible, the individual should be persuaded to remain a member of the Party. (Eldredge, Tr. 68.)

The Utah District of the Communist Party held a District Convention at the home of respondent Holley in Mapleton, Utah, on approximately June 25, 1968. (Eldredge, Tr. 69.) Respondent Holley was present at this convention which was restricted to members of the Communist Party. (Eldredge, Tr. 69.) The convention was called for the specific purpose of formulating the Utah District's position on the new draft program of the Communist Party, Party building, and the 1968 political prospectives. (Eldredge, Tr. 70-71.)

On approximately July 20, 1968, a meeting of the Utah District of the Communist Party was held at the home of petitioner's witness Eldredge in Spanish Fork, Utah. (Eldredge, Tr. 71.) Respondents Archuleta and Holley were both present at this meeting which was restricted to members of the Communist Party. (Eldredge, Tr. 71.) The meeting was called for the specific purpose of hearing a report by the witness Eldredge on the 1968 National Convention of the Communist Party. (Eldredge, Tr. 71.) There was also a discussion regarding the Justice Department's petitions against respondents Archuleta and Holley. (Eldredge, Tr. 72.) During the discussion it was brought out that one individual was probably playing the role of an informer and it was agreed that respondents Archuleta and Holley would contact their legal adviser in New York City and inquire whether or not an investigation should be undertaken to determine who the individual might be. (Eldredge, Tr. 72.)

On approximately September 8, 1968, a meeting of the Utah District of the Communist Party was held at the home of petitioner's witness Eldredge. (Eldredge, Tr. 72.) Respondents Archuleta and Holley were both present at this meeting. (Eldredge, Tr. 72-73.) The witness Eldredge, as Secretary-Treasurer, gave a financial report on the status of the District's treasury, after which the S. A. C. B. hearing was discussed. (Eldredge, Tr. 73.) Respondent Holley read a statement which he had prepared regarding the hearing which would be released to the news media if it became necessary. (Eldredge, Tr. 73.) Respondent Archuleta was advised he should prepare a similar statement with different wording. (Eldredge, Tr. 73.)

Conclusions as to Membership in the Party

The active participation by each of these respondents in conducting the business and affairs of the Communist Party, the presence of each at closed Party meetings, and the holding by each respondent of positions in the Party, all as shown from the foregoing findings, constitute specific, direct, timely, and substantial evidence that each has the intent to be a member of the Party and has been recognized and accepted as a member by the Party. We find and determine on the basis of the clear preponderance of the evidence that each respondent is a member of the Communist Party of the United States of America.

Legal Questions

.1. Communist Party as a Communist-action Organization

We have determined supra that each respondent is a member of the Communist Party of the United States. There is in effect a final order of the Board determining the Communist Party to be a Communist-action organization. 1 S.A.C.B. 29; Communist Party v. Subversive Activities Control Board, 367 U.S. 1 (1960); 26 Federal Register 9923 (October 21, 1961); 33 Federal Register 4538 (March 14, 1968).⁸ It follows that each respondent is a member, in the words of the statute, "of an organization which has been determined by final order of the Board to be a Communist-action organization."

Counsel for respondents contends, however, that respondents were not parties to the proceedings in which the Communist Party was determined to be an action organization and therefore are not and cannot be bound by that determination. The contention is without merit. There is ample authority for holding applicable to these respondents, who are members of and leaders in the Party, the decision of the Supreme Court that the Party is a Communist-action organization within the meaning of the statute. As in Jefferson School of Social Science v. S.A.C.B., 331 F.2d 76 (C.A.D.C., 1963) privity has been established and the finding of the Supreme Court in respect to the Party estopped respondents from relitigating the identical issue determined in the prior case. In addition, see Weinstock v. S.A.C.B., 331 F.2d 75 (C.A.D.C., 1963); National Council of American-Soviet Friendship, Inc. v. S.A.C.B., 322 F.2d 375 (C.A.D.C., 1963); Albertson and Proctor v. S.A.C.B., 332 F.2d 317 (1964) rev. on other grounds, 382 U.S. 70.

⁸ The finding that the Party is an action organization is based upon official notice of the pertinent Board orders and court decisions. See tr. 44-46; 159-160 in the companion case of Attorney General v. Simon Boorda, Board Docket No. I-50-69.

Moreover, the statute provides specific, and we believe exclusive, means for reexamining the status of the Communist Party as an action organization. Section 13(b), as amended, provides:

"Any organization as to which there is in effect a final order of the Board determining it to be a Communist-action organization . . . may, not more often than once in each calendar year, file with the Board and serve upon the Attorney General a petition for a determination that such organization no longer is a Communist-action . . . organization."

A similar provision was in the statute when the Supreme Court in 1961 decided the Communist Party case. In answer to the argument that the Act is a bill of attainder, the Court noted that the provision under which the Party could petition the Board for a redetermination of the Party's amenability to the Act, provides adequate means of relief. 367 U.S. at 87. There has never been any petition filed in the Board by or on behalf of the Party for determination that the Party's status has changed.

Counsel for respondents further, and separately, argues that we should take official notice that the world Communist movement, as described in section 2 of the Act, if it ever existed, no longer exists; that there cannot, therefore, be any Communist-action organization, and the Board's orders finding that the Communist Party is a Communist-action organization are invalid. (Tr. 46-50.)

A brief explanation of background is desirable in considering this argument. In the Communist Party case, the Board recognized that in section 2 of the Act Congress found the existence of a world Communist movement and described its characteristics. The Board set forth its own description, based on the evidence of record, of contemporary Communist institutions in their international aspect, and particularly the role of the Soviet Union in those institutions. The Board concluded that the Communist Party, U.S.A., "is substantially directed, dominated, and controlled by the Soviet Union, which controls the world Communist movement referred to in section 2 of the Act, and operates primarily to advance the objectives of such world movement." 1 S.A.C.B. at 294. The Supreme Court affirmed.

Respondents argue that many leading statesmen and others have repeatedly stated that the notion that there exists such a world Communist movement, a monolithic movement under the control of the Soviet Union, is entirely mythological. (See, tr. 48-49 in Docket No. I-50-69.) We are requested officially to notice this asserted situation.

Under the holding of the Supreme Court in Communist Party v. S.A.C.B., 367 U.S. 1, we are precluded from reexamining in proceedings before us, the congressional findings that there exists a world Communist movement, that it is directed by the Communist dictatorship of a foreign country, and that it has certain designated objectives. "The characteristics of the movement and the source of its control are not to be established by the Attorney General in proceedings before the Board, nor may they be disproved." 367 U.S. at 112. The Court seemed to recognize, however, that changed circumstances in future years, in a future world situation, might warrant the Board or a reviewing court in construing the statute so as to conclude that the Soviet Union is no longer the foreign government referred to in section 2 of the Act, or that the world Communist movement, as Congress meant the term in 1950, no longer exists (page 113). It is on this hypothesis of the Court that respondents rely.

We believe that in the context of the opinion, the hypothesis of the Court is limited to proceedings under the Communist-action provisions of the Act and does not negate or modify the principle enunciated in Jefferson School and other cases, supra, that precludes these respondents from litigating in this proceeding the current status of the Communist Party. Similar arguments, with respect to the same legislative findings, now made by respondents, were made to a three-judge District Court in this District in 1963 in Flynn v. Rusk, 219 F. Supp. 709, and in 1968 in W.E.B. DuBois Clubs, et al v. Ramsey Clark, et al. The argument was specifically rejected in the Flynn case, and, after the filing of legal memoranda by the parties, was ignored by the Court in the DuBois Clubs case. The point was raised in the Supreme Court without success by the appellants in DuBois. See Jurisdictional Statement for plaintiffs-appellants, No. 515, October Term, 1967, pages 19-22, and 389 U.S. 309 (1967).

However, there are more compelling reasons for our refusal to take official notice, as requested by respondents, that the world Communist movement, as described in section 2 of the Act, no longer exists. Public Law 90-237, amending certain provisions of the Subversive Activities Control Act of 1950, became effective on January 2, 1968. Therein the Congress specifically reiterated the findings of fact contained in paragraphs (1) through (15) of section 2 of the 1950 Act. (50 U.S.C. 781.)

It certainly is not for this Board to reexamine the validity of the findings which have so recently been reiterated by the Congress and reject them. Nor do we believe that there is any common knowledge that there is no longer a world Communist movement which resembles the movement described in the Act and as construed by the Board in the Communist Party case.

Quite the contrary, we note that in enacting Public Law 90-237 the Congress had before it the October 4, 1967, Report of the House Committee on Un-American Activities entitled, Internal Security Act of 1950 Amendments, on the House version of the bill which became Public Law 90-237. House Report No. 733, 90th Congress, First Session. Pages 10-13 of the Report are devoted to consideration of the Congressional Findings detailed in section 2 of the Subversive Activities Control Act of 1950. Pertinent excerpts from the Report are as follows:

"It is to the world Communist movement dominated by the Soviet Union that the Congress in 1950 directed its concern. That world Communist movement, the subject of findings and a report of the Subversive Activities Control Board, whose findings were upheld by the Supreme Court in the 1961 Communist Party case, continues to exist." (P. 11.)

The House Report discusses differences which have been at times manifested within the world Communist movement, particularly as respects the present leadership of the Communist Party ruling Red China. The Report concludes that even if a permanent break should develop between the Communist parties of the Soviet Union and Red China, it does not follow that the world Communist movement, as Congress meant the term in 1950, will cease to exist, or that the Communist Party of the United States would no longer continue under the domination and control of the Soviet Union.

In our less detailed ruling during the hearing in Docket No. I-50-69, which appears at transcript pages 159 & 160 thereof, and is applicable to these proceedings, we refused to officially notice that the movement as described in the 1950 Act no longer exists, and to declare the Board's earlier order invalid. We are not at all, or even slightly, convinced that circumstances have changed as respects the movement and its direction. We do not, therefore, reach the question of whether we would have the authority in this proceeding to declare invalid the order of the Board which determined the Communist Party, U.S.A., to be a Communist-action organization, and which order was upheld by the Supreme Court, if a substantial showing was made that the world Communist movement as described in section 2 no longer exists.

We have gone to some length in recording our consideration of this matter because it is of first impression as an issue under the amended statutory provisions, and because it is common to a series of seven cases.

2. The Issue as to Electronic Surveillance

Prior to the evidentiary hearings we heard oral argument and thereafter denied a motion of respondents under which we were asked to require petitioner to disclose any electronic overhearing that may have taken place of conversations at the offices of the Communist Party or at the offices or homes of Communist Party members in which conversations respondents did not participate or during which respondents were not present. Subsequently we heard oral argument on a motion to reconsider, and we reaffirmed our previous ruling. A copy of the first ruling is attached hereto as Appendix A, and the ruling on reconsideration as Appendix B. Both rulings are by this reference incorporated herein.

It is to be noted that the evidence presented by petitioner obviously was the independent, first-hand knowledge of the witnesses. The witnesses were members of the Communist Party and testified from their own personal, first-hand knowledge of meetings which they attended. There was no effort made during cross-examination to overcome the clear inference that the witnesses attended the meetings by reason of their being members.

3. Asserted Invasion of Attorney-Client Relationship

Counsel for respondents contends that the facts set forth below constituted an invasion of the attorney-client relationship which tainted this entire proceeding and requires that we dismiss the proceeding. (Tr. 174.)

Petitioner's witness Eldredge and his wife, both informants for the F.B.I., attended a Communist Party convention in New York City over the week-end of July 4, 1968, as delegates from Utah. (Tr. 158.) This was shortly after the petitions with respect to Mr. Holley and Mr. Archuleta had been filed in this proceeding, and the witness had heard about the petitions before he left Salt Lake City. (Tr. 160.)

Eldredge was given instructions by respondent Wayne Holley that when he attended the convention to be sure and contact Mr. Abt [an attorney in New York who subsequently became counsel for respondents in this proceeding] to find out what was going on with respect to the Board proceeding and let Holley know, and to have Mr. Abt contact Mr. Holley. (Tr. 172 & 173.)

At the convention, Eldredge asked someone to point out Mr. Abt to him, and Eldredge went and talked to Mr. Abt. (Tr. 173.) Eldredge gave Mr. Abt the address and phone number where Mr. Holley could be reached. (Tr. 161.) Eldredge asked Abt about the case, and Abt told Eldredge that the case would be fought on the basis that it was unconstitutional. (Tr. 161.)

Eldredge reported his conversation with Mr. Abt to the F.B.I. as part of his report on the Party convention. (Tr. 162, Resp. Exh. 1.) The F.B.I. never mentioned to Eldredge that he should contact Mr. Abt or find out anything about plans for the defense of the case. (Tr. 173.) The F.B.I. agent to whom Eldredge made his report on the convention made no comments on the portion of the report covering Eldredge's conversation with Mr. Abt -- the agent never mentioned it. (Tr. 171.)

The foregoing arose at the concluding part of the hearings. We requested each side to submit a legal memorandum on the motion made by counsel for respondents to dismiss the proceeding. Counsel for respondents replied that he did not propose to submit a written memorandum (tr. 174) and has not done so. A legal memorandum in opposition to the motion to dismiss was submitted by counsel for petitioner.

Petitioner bases his opposition to respondents' motion on three points:

1. No confidential agency relationship existed between Eldredge and Mr. Holley or Mr. Abt in furtherance of an attorney-client relationship;
2. The conversation in question was not privileged;
3. Even assuming an improper intrusion into the attorney-client relationship, no prejudice to the preparation of a proper defense resulted from the conversation between Mr. Abt and Mr. Eldredge, and no benefit resulted to the Government.

The question here is whether "the entire proceeding is tainted" because Eldredge reported to the F.B.I. his conversation with Attorney Abt during the Communist Party convention. No effort was made by Mr. Abt, counsel for respondents, to show how or in what way the entire proceeding is tainted by reason of the reported conversation, and we do not have the benefit of any arguments and authorities in support of the contention.

No showing was made of a desire for confidence on the part of Mr. Holley as to the conversation he asked Eldredge to have with Attorney Abt, or on the part of Attorney Abt as to his conversation with Eldredge. Had there been a desire for confidence this readily could have been established. The circumstances of record imply non-confidentiality. The conversation took place at a Communist Party convention and, so far as the record shows,

no precautions were taken to make the conversation private. Further, no claim was made by Attorney Abt that the conversation involved anything of a confidential nature, and the substance of the conversation as appears of record (see tr. 161; also Resp. Exh. 1) contained nothing which on its face has the color of confidentiality. We find that no showing has been made that a confidential relationship existed as respects Mr. Holly or the parties to the conversation. Moreover, there is no showing that the Government in any way intended or sought a surreptitious intrusion by one of its informants into the attorney-client relationship. The indications of record are to the contrary. It is clear from the face of the record that the evidence presented by petitioner was completely free from and independent of the reported conversation, and no contrary challenge was made.⁹ In sum, we are certain that the fact the conversation took place and was reported to the F.B.I. in no way deprived the hearing of fundamental fairness.

Since there was no showing that a confidential relationship attached to the conversation and in our opinion the hearing was not deprived of fundamental fairness, we conclude that the contention that the entire proceeding is tainted is without merit. The motion to dismiss is denied.

Ultimate Findings and Conclusions

Based upon the foregoing findings and rulings, the Board finds and determines from the preponderance of the evidence that each respondent, Robert Archuleta and Wayne Dallas Holley, is a member of the Communist Party of the United States of America, an organization which has been determined by final order of the Board to be a Communist-action organization.

⁹ Since the conversation was between counsel for respondents and one of the witnesses, counsel for respondents readily would have recognized any testimony possibly derived from the conversation.

An appropriate order accompanies this Report of the Board. A copy of the Report and Order shall be served upon each respondent.

By the Board:



John W. Mahan, Chairman
John W. Mahan

Leonard L. Sells, Member
Leonard L. Sells

John S. Patterson, Member
John S. Patterson

Simon F. McHugh, Jr., Member
Simon F. McHugh, Jr.

November 21, 1968

Washington, D. C.



APPENDIX A

SUBVERSIVE ACTIVITIES CONTROL BOARD

RAMSEY CLARK, ATTORNEY GENERAL OF THE UNITED STATES,

PETITIONER,

v.

ROBERT ARCHULETA, RESPONDENT IN DOCKET NO. I-45-69
WAYNE DALLAS HOLLEY, RESPONDENT IN DOCKET NO. I-46-69

RULING ON RESPONDENT'S MOTION
FOR PRODUCTION OF OVERHEARD CONVERSATIONS

This is a proceeding on petition of the Attorney General for an order of the Board determining the respondent to be a member of the Communist Party of the United States, a Communist-action organization.¹ Respondent has filed a motion for prehearing inspection and use at the hearing of all records and reports in the possession of the Government of conversations overheard or monitored by means of wire tapping or electronic eavesdropping. The term "conversations" as used by respondent includes every oral communication:

- "1. By or to respondent;
2. By or to any person concerning respondent, whether respondent was identified therein by name, or is otherwise identifiable; and
3. By or to any person who was a member of any section, division, group or committee of the Communist Party of which respondent is or was allegedly a member."

¹ This is one of seven similar petitions, Dockets I-45-69 through I-51-69, which were filed by the Attorney General on July 1, 1968. The seven respondents are represented by the same counsel and an identical motion for production was filed in each case. Identical responses to the motions were filed by petitioner. Our rulings, of course, are also identical.

Petitioner in a written response to the motion stated that, "we have no indication nor any information that there has been any electronic coverage or interception by any means of any conversation or statement by or to Respondent." Petitioner's response then challenged respondent's standing as to categories 2 and 3 of the conversations covered by the motion.

Oral argument on respondent's motion and petitioner's response thereto was heard by the Board on September 3, 1968. We note at the outset that the issue is a rather limited one. Petitioner's written response, as we have said, represents that there has not been any electronic coverage or interception by any means of any conversation or statements by or to respondent. This was further expanded at the oral argument. Counsel for petitioner made the following representations:

" . . . no conversations were recorded wherein a finding could be made that a respondent was present." (Tr. 14.)

" . . . the respondents in this case were never overheard in any conversations." (Tr. 19.)

" . . . the findings couldn't be made that they [respondents] were ever present when a conversation was intercepted." (Tr. 20.)

On the basis of this record we accept as a fact that there has not been any overhearing by the Government of any conversations where respondent was present or participated. The issue then, as stated by counsel for respondent, is that "of standing with respect to eavesdropped conversations, where the person claiming or seeking discovery is not a participant" (tr. 3).

Respondent's motion other than as to conversations in which respondent was present or participated (which it is now established there were none) is quite broad and far-reaching. The request for production extends, in the words of counsel for respondent, to the offices of the Communist Party and the homes and offices of fellow members of the Communist Party, even if respondent was not at one of these places at the time of the overheard conversation. See, e.g., tr. 10.

It is argued that Party members and officers have a special relationship to the offices of the Communist Party and the homes and offices of fellow members, and that Party members are colleagues of each other. This

² We are aware that counsel for respondent does not seek the contents of all such intercepted conversations, only of those which subsequently would be determined to be relevant and material to this proceeding. We are not now involved in determining such relevancy and materiality.

"special relationship" is urged as giving standing with respect to conversations at such premises. Also, that being "colleagues" gives standing as to conversations by and between other colleagues, the same as is extended to codefendants in criminal cases.

As pointed out by counsel for petitioner, this is not a criminal proceeding. Neither is it a civil action as that term describes judicial proceedings. This is an administrative proceeding to determine respondent's status as an alleged member of the Communist Party. We have been cited no authority, and are not aware of any, which supports in a criminal case a broad and sweeping request for disclosure such as here involved, let alone in an administrative proceeding for a determination of status.³ Absent clear or persuasive judicial decision that a respondent in proceedings like this one is entitled to disclosure of intercepted conversations in which respondent did not participate or at which respondent was not present, we will not issue an order recognizing a standing so far-reaching and sweeping as respondent asserts.

Moreover, proof by the Attorney General of respondent's alleged membership in the Communist Party must be specific, direct and timely.⁴ Yet respondent seeks disclosure of all conversations by or to any person concerning respondent, and of all conversations by or to any member of any organizational part of the Communist Party which respondent allegedly is or was a member, all irrespective of when the conversations took place.

The possibility that intercepted conversations which could cover many third persons and extend over many past years could be relevant and material to respondent's alleged current membership in the Communist Party is remote and insubstantial in the circumstances. We fail to see how current membership in the Party could confer standing to require such a far-reaching and sweeping disclosure.

Counsel for petitioner pointed out during oral argument that this is a case in the internal security field wherein the lawful use of electronic surveillance has long been recognized. (Tr. 13.) There is presently no issue and we do not decide whether otherwise producible conversations can be withheld, and under what conditions, if a national security representation is made as to the disclosure. We recognize, however, that broad and sweeping disclosure of surveillances made in the interest of the national security should not be done lightly. In our view, the pertinent demands of a fair hearing and due process do not require giving the respondent broad access to surveillance information involving conversations in which respondent did not participate or at which respondent was not present.

³ Counsel for respondent candidly stated at the beginning of his oral argument that "the law on that subject is wide open" and the whole subject of standing is "up for grabs." (Tr. 3 & 4.)

⁴ Cf., National Council of American-Soviet Friendship, Inc. v. Subversive Activities Control Board, 322 F.2d 375 (C. A. D. C., 1963).

Under the circumstances of this case we do not believe that respondent is entitled to production as to the conversations covered in items 2 and 3 of the motion. There is nothing to order produced under item 1 of the motion.

Accordingly, it is

ORDERED that respondent's motion should be and the same is hereby denied.

By the Board:



John W. Mahan, Chairman
John W. Mahan
Leonard L. Sells, Member
Leonard L. Sells

John S. Patterson, Member
John S. Patterson
Simon F. McHugh, Jr., Member
Simon F. McHugh, Jr.

September 6, 1968

Washington, D. C.

APPENDIX B

SUBVERSIVE ACTIVITIES CONTROL BOARD

RAMSEY CLARK, ATTORNEY GENERAL OF THE UNITED STATES,
PETITIONER,

v.

ROBERT ARCHULETA, RESPONDENT IN DOCKET NO. I-45-69
WAYNE DALLAS HOLLEY, RESPONDENT IN DOCKET NO. I-46-69
ANNA PASTOR LACONICH, RESPONDENT IN DOCKET NO. I-47-69
RUTH BEER, RESPONDENT IN DOCKET NO. I-48-69
SCARLETT ANN PATRICK, RESPONDENT IN DOCKET NO. I-49-69
SIMON BOORDA, RESPONDENT IN DOCKET NO. I-50-69
SARGEANT CAULFIELD, RESPONDENT IN DOCKET NO. I-51-69

RULING ON RESPONDENTS' MOTION FOR RECONSIDERATION
OF ORDER DENYING MOTION CONCERNING ELECTRONIC SURVEILLANCE

At the hearing on September 11, 1968, in Docket No. I-50-69, counsel for respondent made an oral motion, applicable to each of the seven captioned cases, that the Board reconsider its ruling denying identical motions aimed at disclosure of any electronic overhearing that may have been done by the Government.

Our ruling dealt in substance only with any possible overhearing of conversations in which the respondents did not participate or at which the respondents were not present. We accept the representations of counsel for petitioner that the respondents in these cases were never overheard in any conversations, and that their premises were never the object of any electronic surveillance. We did not in our ruling specifically mention the attorney-client relationship. But it is obvious from the foregoing that there was no overhearing of any conversation by a respondent with an attorney, or by an attorney with a respondent, or by any attorney when a respondent was present. And at the argument on the motion for reconsideration, counsel for petitioner repeated his statement that, "No interceptions have been made of any attorney-client relationships in these cases." (Tr. 14, 32.)

Counsel for respondent, relying mainly on the August 9, 1968, decision of the United States Court of Appeals for the District of Columbia Circuit in *Baker v. United States* (No. 21, 154), urges that as a minimum we

should require production of conversations obtained by eavesdropping on premises in which a respondent has "a special relationship." In the Baker case the defendant was given "standing" as to conversations at which he was not present where he had a key to his business associate's hotel suite, was welcome to use the suite at any time, and did use it for meetings and to make telephone calls.

Here, counsel for respondent would have us extend the "special relationship" principle to give these respondents standing as to any "offices of the Communist Party" and "the homes of fellow members of the Communist Party and the offices of fellow members of the Communist Party" as to conversations when the particular respondent was not present at the time.

The mere contention of counsel that a respondent may be welcome to visit from time to time at the homes and offices of his fellow members of the Communist Party does not in our view give carte blanche standing for prehearing production as to conversations by or to such fellow members when respondent did not participate in the conversations or was not present at the time of the conversations. In the circumstances present in these cases there is no justification for recognizing a standing for prehearing disclosure so broad and sweeping as these respondents assert.¹ We will affirm our previous ruling.

The respondent in each of these cases is represented by attorneys John Abt and Joseph Forer. At oral argument on the motion to reconsider, attorney Forer requested that the Board issue a subpoena directed to the Attorney General and the Director of the Federal Bureau of Investigation to have them produce for the Board all records of any intercepted conversations of himself and co-counsel John Abt. We have previously herein discussed the matter of attorney-client relationship. In the circumstances, the request for a subpoena is clearly a fishing expedition without any reasonable or even remote relationship to the violation of any rights of the respondents.

The request for the issuance of subpoenas will be denied.

It is, therefore,

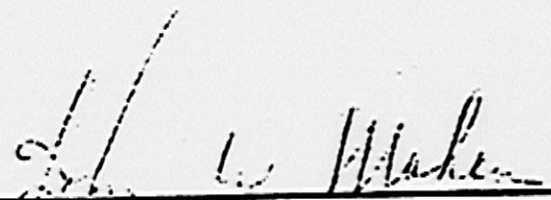
¹ We recognize and accept the proposition that illegally obtained evidence or the fruits thereof have no place in Board proceedings. There may arise situations placing a burden on the Attorney General to establish that proffered evidence was legally obtained from an independent source.

ORDERED that respondents' motion for reconsideration of our ruling of September 6, 1968, is denied and the ruling is reaffirmed.

FURTHER ORDERED that in the circumstances respondents' request that we subpoena the Attorney General and the Director of the Federal Bureau of Investigation is denied.

By the Board:

(SEAL)



John W. Mahan
Chairman

September 17, 1968

Washington, D. C.



SUBVERSIVE ACTIVITIES CONTROL BOARD

RAMSEY CLARK, ATTORNEY GENERAL OF THE UNITED STATES,
PETITIONER,

v.

ROBERT ARCHULETA, RESPONDENT IN DOCKET NO. I-45-69
WAYNE DALLAS HOLLEY, RESPONDENT IN DOCKET NO. I-46-69

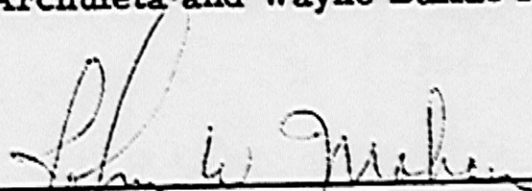
ORDER

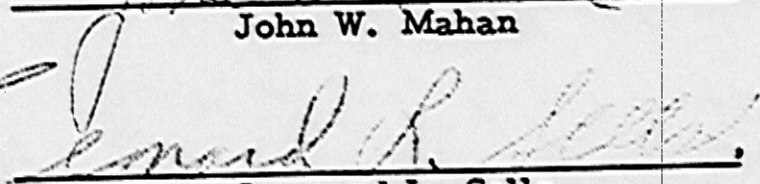
The Board, after a full consolidated hearing upon petitions of the Attorney General, having this day issued its findings as to the facts, and having determined that each respondent is a member of the Communist Party of the United States of America, it is

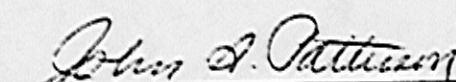
ORDERED that the petitions of the Attorney General be and the same are hereby granted and each respondent, Robert Archuleta and Wayne Dallas Holley, is found and determined to be a member of the Communist Party of the United States of America, a Communist-action organization, pursuant to the provisions of section 13(a) of the Subversive Activities Control Act of 1950, as amended, and it is

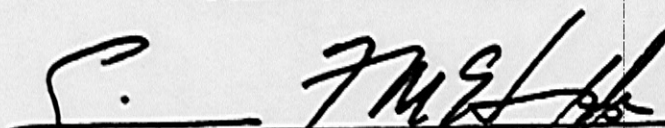
FURTHER ORDERED that a copy of this ORDER be served upon each respondent, Robert Archuleta and Wayne Dallas Holley.

By the Board:


_____, Chairman
John W. Mahan


_____, Member
Leonard L. Sells


_____, Member
John S. Patterson


_____, Member
Simon F. McHugh, Jr.



November 21, 1968
Washington, D. C.